

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Website address: www.dir.ca.gov/oshsb**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 497)****INTRODUCTION**

The Occupational Safety and Health Standards Board (board) received a petition on June 18, 2007, from Brenda Roach (Petitioner) representing the Associated General Contractors of California. The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3405, of the Tunnel Safety Orders (TSO), concerning the definition of the term "tunnel."

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt. Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

The Petitioner is concerned about the application of the TSO to a pipe-laying operation whereby pipelines are placed into an open trench or excavation and then backfilled with soil. The Petitioner states that the Division, acting through its Mining and Tunneling Unit, has taken the position that, when a pipe is 30 or more inches in diameter and employees briefly enter the pipe to complete the pipe-laying activity, the pipe-laying operation falls within the Section 8405 definition of "tunnel," which reads as follows:

Tunnel. An underground passageway, 30 inches in diameter or greater, excavated by employees working below the earth's surface, that provides a subterranean route along which employees, equipment or substances can move; other than passageways excavated by mine or quarry operators in connection with such operations. For the purpose of these safety orders, "tunnels" include shafts, raises, underground chambers and premises appurtenant thereto.

The Petitioner states that this Division policy is unreasonable, because it burdens employers without increasing worker safety. According to the Petitioner, pipe-laying operations are already governed by provisions the Construction Safety Orders (CSO) regarding excavations and by the confined space provisions of the General Industry Safety Orders (GISO). The Petitioner also asserts that the Section 8405 definition of "tunnel" may be inconsistent with the following definition of "tunnel" found at Labor Code Section 7951(b):

“Tunnel” means an underground passageway, excavated by men and equipment working below the earth’s surface, that provides a subterranean route along which men, equipment, or substances can move.

In order to halt the application of the TSO to the pipe-laying operation of concern to the Petitioner, the Petitioner requests the inclusion in Section 8405 of language that makes it clear that the TSO do not govern “the work of installing pipes, including cast-in place pipe and the construction of culverts and manholes.”

DIVISION’S EVALUATION

The Division’s evaluation report dated September 27, 2007, states that the following pipelines are under the jurisdiction of the TSO by virtue of Section 8403(a)(3): “Pipelines which are connected to and/or are an integral part of a tunnel where persons are working inside and the conditions are similar to a lined tunnel construction or repair project.”

The TSO do not apply to “cut-and-cover” pipelines if they are not connected to a tunnel or tunnel-related shaft, such as open-ended pipelines. Similarly, these orders do not apply to open-ended pipes and cast-in-place culverts that are trenched and covered over. These pipes, pipelines, and culverts fall under the applicable provisions of both the CSO and the GISO.

In practice, even when a pipeline is connected to a tunnel, the Division does not believe the TSO apply when the pipeline is effectively and physically isolated from the tunnel environment by a valve, water trap, or bulkhead, since the hazards associated with a tunnel environment do not exist.

The Division recommends that the TSO not be changed.

STAFF’S EVALUATION

Board staff has reviewed the Petitioner’s request and discussed the issues with representatives of the Division’s Mining and Tunneling Unit and the Research and Standards Unit. The Petitioner was also contacted by Board staff and informed that the Division intends to amend the Section 8405 definition of “tunnel” as part of the proposed amendments of the TSO and that those amendments would be reviewed by an advisory committee prior to presentation to the Board at a public hearing. The Petitioner stated that it still elects to pursue this Petition. The Petitioner did not indicate whether any construction industry employers had experienced adverse enforcement action by the Division with regard to the specific issue raised in this petition.

The Board staff agrees with the Petitioner that the CSO and GISO are intended to apply to such general construction operations as routine pipe laying and culvert construction. As stated in CSO, Section 1540(a):

Scope and application. This article applies to all open excavations made in the earth's surface. Excavations are defined to include trenches.

While the Board staff disagrees with the Petitioner's contention that the Labor Code and Section 8405 definitions of "tunnel" might be inconsistent, the Board staff agrees that the TSO are not intended to apply to the pipe-laying operation in question. Board staff agrees with the Division that Section 8405(a)(3) excludes the TSO from governing construction pipe laying operations where there is no connection to a tunnel, regardless of the pipeline diameter or whether or not the workers enter the pipeline to perform momentary work. Also, the Board staff does not find evidence of a Division policy that classifies pipe-laying operations as a tunnel operation when the pipe diameter is 30 inches or more. Board staff believes that for the reasons given in this evaluation, the Standard's Board should deny the Petitioner's request as unnecessary.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Brenda Roach representing the Associated General Contractors of California, to make recommended changes to Section 3405 of the TSO concerning the definition of the term "tunnel." The Board has also considered the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the Petition is hereby denied.

The Board notes that the Division will be conducting an advisory committee in 2008 to consider proposed amendments to the TSO for presentation to the Board at a future Public Hearing. The Petitioner may wish to note and participate in the Division's ongoing rulemaking process which, in addition to the advisory committee, provides an opportunity for written and oral public comments in conjunction with the Public Hearing.